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IN THE SUPREME COURT OF THE STATE OF FLORIDA

MARIO KRAJEWSKI,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 80,087

PETITIONER'S INITIAL BRIEF ON THE MERITS

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AUTHORITIES CITED

PRELIMINARY STATEMENT

Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in the trial court. Respondent was the appellee and the prosecution. In the brief, the parties will be referred to by name.

The following symbol will be used:

"R" Record on Appeal

STATEMENT OF THE CASE

Mario Krajewski, together with a codefendant, Robert Poidomani, was informed against for possessing more than 400 grams of cocaine (Count I) and for conspiring to buy more than 400 grams of cocaine from William O'Hara (Count II) (R 698). On conclusion of the evidence at trial (R 703), the jury returned its verdicts finding Mr. Krajewski guilty of each count as charged (R 704,705).

Mr. Krajewski appealed his convictions and concurrent terms of the mandatory minimum fifteen years in prison on each count (R 709-710,711) to the Fourth District Court of Appeal, which reversed his convictions on the grounds that his due process rights were violated by the entrapment procedures used by the State in connection with the confidential informant whose activity led to Mr. Krajewski's arrest and that of his codefendant. This decision was subsequently quashed by this Court, and the instant cause was remanded to the district court of appeal for reconsideration in light of State v. Hunter, 586 So.2d 319 (Fla. 1991). On remand, the district court recognized that Cruz v. State, 465 So.2d 516 (Fla. 1985), cert. denied, 473 U.S. 905, 105 S.Ct. 3527, 87 L.Ed.2d 652 (1985), controlled the disposition of this cause. In its decision, the district court ruled that

> A strict and literal interpretation of the phrase "interruption of a specific ongoing criminal activity" might inhibit or even prohibit the use of informants in situations involving first-time or occasional criminal behavior. Thus, a broader interpretation is both logical and more practical. In the present case, the state's evidence, while controverted in part by the defense, supports the proposition that a crime had been planned in advance and was in the process of being executed when the CI entered the picture.

This satisfies the requirement of a specific ongoing criminal activity.

This Court accepted jurisdiction to review the instant cause.

This brief on the merits follows.

STATEMENT OF THE FACTS

On February 22, 1988, Detective O'Hara of the Broward Sheriff's Office received a telephone call from an informant, Vern Phinney (R 213), who had been arrested a year earlier by federal agencies while attempting to smuggle 100 kilograms of marijuana into this country from the Bahamas (R 387). He faced a mandatory minimum sentence of between five and forty years in prison (R 388), and had been trying ever seen to give substantial assistance to the federal authorities in exchange for a reduction of his sentence, but had as yet proven unsuccessful. Since Mr. Phinney's sentencing hearing was set for April, 1988 (R 400), he was under some pressure to obtain results (R 401), as the federal authorities were not especially impressed with his efforts to date and were not inclined to move for any reduction of his sentence (R 400). It did not help that he had been caught using drugs while ostensibly acting as an informant, in violation of agency procedure (R 403).

Phinney told O'Hara that he had set up a deal for one kilogram of cocaine, which the federal agencies were uninterested in pursuing because the quantity of drugs involved was too small (R 395). O'Hara agreed to assist him, and on February 25, O'Hara met Phinney at a shopping center, where he was introduced to Robert Poidomani (R 215). Poidomani told O'Hara he wanted to buy a kilo of cocaine (R 215). When O'Hara asked to see his money, Poidomani directed him to Mr. Krajewski, who was sitting in the car (R 215). Mr. Krajewski showed O'Hara a blue bag which contained a substantial amount of cash (R 215). He said he was the "boss" in charge of the money (R 217). Unlike some sophisticated drug dealers, Mr.

Krajewski and Poidomani did not frisk the agent to see if he was bugged (R 263). O'Hara told Mr. Krajewski and Poidomani that it would take him a couple of hours to get the cocaine, and he left (R 217).

At about 2:00 p.m. the same day, O'Hara was paged on his beeper (R 217). It was Poidomani (R 217). O'Hara told him that he had the cocaine, which he would sell for $12,500 (R 218). Poidomani agreed that he and Mr. Krajewski would take a taxi to the meeting place at a bowling alley, and O'Hara suggested that he would stay with the other two men while his partner took the money and got the cocaine (R 221-222).

At the bowling alley, Mr. Krajewski got in the car with O'Hara's partner, Detective Barnhouse, who Mr. Krajewski insisted should count the money given him so that there would be no dispute later over the amount (R 225,253,272). Then, for the first time in Barnhouse's extensive experience as a drug undercover agent (R 285), the buyers let him leave with all their money (R 227,273).

Barnhouse returned about five minutes later with the cocaine (R 228)). Mr. Krajewski got in the back seat of Barnhouse's car, and O'Hara got in the front driver's seat before handing Mr. Krajewski the cocaine (R 228,275). Mr. Krajewski asked him if the package contained all cocaine rock, and after being assured that it did, he seemed satisfied (R 227,228-229). Poidomani, who said he was going to call a cab, was not present during the drug transaction (R 230). When he came back outside, the agents gave the appropriate signal, and he and Mr. Krajewski were placed under arrest (R 278).

By stipulation, it was agreed that the substance given to Petitioner by the agents was cocaine weighing 1000 grams (R 327, 576).

Mr. Krajewski's mother testified that she lived on a small farm in Connecticut, where she and her family raised farm animals and escargot (R 339). Her research suggested that growing conditions for snails were better in Central America, where she hoped to buy some land. She planned to obtain a boat for transportation to an island owned by friend of hers, and to that end she gave Mr. Krajewski $13,000 from her savings to buy a boat in Florida (R 338).

Robert Poidomani, called by the defense as a witness, testified that he knew Mr. Krajewski from Mr. Krajewski's job as a bouncer in a Connecticut bar (R 446), where Mr. Krajewski worked in addition to his employment with the mentally handicapped (R 347). Poidomani himself was a drug addict and small-time dealer (R 447), but he had never known Mr. Krajewski to use any drugs (R 448). At a hearing on a motion to dismiss, Poidomani testified under oath that he accompanied Mr. Krajewski to Florida to buy a boat from Vern Phinney (R 463), whom Poidomani met while in Florida a few months earlier working on a construction job (R 451). Phinney lived on a boat and held himself out to be an expert in boat repairs (R 383). According to Poidomani's trial testimony, Phinney also said that he was a drug dealer and smuggler (R 452,454).

When Mr. Krajewski and Poidomani met him, Phinney said he would help them buy some drugs (R 455). At trial, Poidomani denied

approaching Phinney about buying a boat first (R 455), but instead said that it had been his and Mr. Krajewski's intention all along to buy a kilo of cocaine to bring back to Connecticut and sell (R 455). Phinney tried to keep in daily contact with Mr. Krajewski and Poidomani, and he testified that he was pretty upset when he'd lost touch with them after they did not appear at a meeting he had scheduled one day. He strongly expressed his feelings to Poidomani at the motel room Poidomani shared with Mr. Krajewski (R 409,411), but he denied using a gun (R 411), which would have been in violation of his informant's agreement (R 238).

Poidomani had claimed at the hearing on his motion to dismiss that Phinney threatened him at gunpoint to force him to go through with the drug deal when he tried to back out at one point (R 464), but at trial he denied that this happened (R 466). Poidomani agreed that he was a cocaine addict who would lie, cheat or steal to get drugs (R 466-467). He admitted that he lied to Mr. Krajewski by telling him that he had already set up a drug deal in Florida before they ever left Connecticut, and that it was a lie when he told Mr. Krajewski upon reaching Florida that the deal had fallen through (R 468-469). In exchange for his testimony, he received a reduction from a possible fifteen to thirty year mandatory minimum sentence to a seven and a half year prison term with a five year mandatory minimum sentence (R 476-477).

Phinney told Poidomani and Mr. Krajewski to go to the Naughty Mouse, a lounge, to meet their contact, but no one ever showed up there (R 480). Poidomani admitted that he and Mr. Krajewski had a verbal and physical fight while they were there, which resulted

in Mr. Krajewski throwing some money down (R 483-484,485). Poidomani claimed to have been too drunk to remember what the fight was about (R 481). But a dancer at the lounge, Angela Hayes, was with the two men that night, and she testified at trial that she heard Mr. Krajewski say he did not want to go through with the deal, but wanted to go home instead (R 360). Poidomani had responded that Mr. Krajewski would have to go through with it (R 361). Poidomani himself agreed that he might have begged Mr. Krajewski to stay to help and protect him (R 495,547).

At the drug transaction itself, Poidomani told Mr. Krajewski that fronting the money to the buyers was not really a good idea, but Mr. Krajewski insisted on proceeding in this manner because he would rather lose the money than his life (R 499).

SUMMARY OF THE ARGUMENT

Under the test of Cruz v. State, 465 So.2d 516 (Fla. 1985), the State's activity in the present case, undertaken via its confidential informant, deprived Mr. Krajewski of his due process rights under the Florida constitution. The informant was not employed to interrupt specific ongoing criminal activity, nor were the means employed reasonably tailored to apprehend those involved in ongoing criminal activity. Since the informant dealt directly and personally with Mr. Krajewski as well as with his codefendant, Robert Poidomani, Mr. Krajewski was entitled to raise the entrapment defense at trial, and this Court should reverse the decision of the district court of appeal rejecting Mr. Krajewski's entrapment defense.

ARGUMENT

THE STATE'S ACTIONS IN USING AN INFORMANT WHO WAS SEEKING THE REDUCTION OF HIS OWN CRIMINAL PENALTY AND WHO WAS NOT PROVIDED WITH ANY GUIDELINES OR OTHER CONTROL AS TO THE TARGET OF HIS ACTIVITIES OR THE MANNER IN WHICH HE CONDUCTED HIMSELF VIOLATED APPELLANT'S DUE PROCESS PROTECTIONS AS GUARANTEED BY THE FLORIDA CONSTITUTION.

In its decision in State v. Hunter, 586 So.2d 319 (Fla. 1991), this Court held that entrapment by a State agent which meets the test set forth in Cruz v. State, 465 So.2d 516 (Fla. 1985), cert. denied, 473 U.S. 905 (1985), violates a defendant's due process rights as guaranteed by the Florida constitution and will vitiate his prosecution.[1] That test provides:

> Entrapment has not occurred as a matter of law where police activity (1) has as its end the interruption of specific ongoing criminal activity; and (2) utilizes means reasonably tailored to apprehend those involved in ongoing criminal activity."

Id., at 522 (emphasis added). An alternate analysis employing the test set forth in State v. Glosson, 462 So.2d 1082 (Fla. 1985), on the basis of which this Court had predicated its ruling in the case, Hunter v. State, 531 So.2d 239 (Fla. 4th DCA 1988), was rejected by this Court.

Applying the Cruz test in Hunter, this Court found that the informant in that case had become the State's agent, and his acts

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[1]Although the prosecution in Hunter commenced before the effective date of Section 777.201, Florida Statutes (1989), that statute can have no effect on the viability of a defendant's rights under Florida's due process clause. State v. Anders, 596 So.2d 463 (Fla. 4th DCA 1992); State v. Petro, 592 So.2d 254 (Fla. 2nd DCA 1992); Strickland v. State, 588 So.2d 269 (Fla. 4th DCA 1991); Bowser v. State, 555 So.2d 879 (Fla. 2nd DCA 1989). But see, Simmons v. State, 590 So.2d 442 (Fla. 1st DCA 1991). Cf., Lewis v. State, 597 So.2d 842 (Fla. 3rd DCA 1992).

therefore had to be construed as "police activity." Since there was no "specific ongoing criminal activity" being investigated by the police until the informant created the activity in order to meet his quota of drug arrests, his conduct did not meet either part of the Cruz test. As to the defendant who was brought into the scheme by the informant, then, the trial court erred in denying his motion for judgment of acquittal which raised the entrapment defense.

In the present case, the activity of the informant likewise cannot meet the Cruz test for permissible State action. As to the first prong of the test, the police in the instant case, like those in Hunter, were not investigating any "specific ongoing criminal activity" until the informant, Vern Phinney, approached them after having set up Mr. Krajewski and his codefendant. Indeed, Mr. Krajewski had no known criminal record, and his associate, Poidomani, testified that he had never known him to use, let alone deal in drugs before (R 448).

Despite this state of affairs, the district court below refused to find that the first prong of the Cruz test for entrapment had been satisfied in the instant case. It based this finding on its conclusion that

> A strict and literal interpretation of the phrase "interruption of a specific ongoing criminal activity" might inhibit or even prohibit the use of informants in situations involving first-time or occasional criminal behavior. Thus, a broader interpretation is both logical and more practical. In the present case, the state's evidence, while controverted in part by the defense, supports the proposition that a crime had been planned in advance and was in the process of being executed when the CI entered the picture.

> This satisfies the requirement of a specific ongoing criminal activity.

Krajewski v. State, 597 So.2d 814 (Fla. 4th DCA 1992).

This interpretation of Cruz misperceives the nature of the remedy and, thus, the focus of the inquiry. In Cruz v. State, 465 So.2d 516 (Fla. 1985), this Court addressed a police decoy operation set up in a high crime area of Tampa. An officer posed as an inebriated indigent, plainly displaying from a rear pants pocket $150 in currency. The defendant, Cruz, approached the decoy, attempted to engage him in conversation, walked away, and then returned a few minutes later and took the money from the decoy's pocket. This Court noted that, "Police were not seeking a particular individual, nor were they aware of any prior criminal acts by the defendant." Id. at 517, emphasis added.

Cruz was charged with grand theft, but the charge was dismissed on the basis that the police action which led to his arrest constituted entrapment as a matter of law. This Court agreed, distinguishing between so-called subjective entrapment, which will always be determined by a jury, and "objective" entrapment, which was described by Justice Frankfurter in language quoted by this Court:

> The crucial question, not easy of answer, to which the court must direct itself is whether the police conduct revealed in the particular case falls below standards, to which common feelings respond, for the proper use of governmental power....
>
> [A] test that looks to the character and predisposition of the defendant rather than the conduct of the police loses sight of the underlying reason for the defense of entrapment. No matter what the defendant's past record and present inclinations to criminali-

> ty, or the depths to which he has sunk in the estimation of society, certain police conduct to ensnare him into further crime is not to be tolerated by an advanced society... Permissible police activity does not vary according to the particular defendant concerned; surely if two suspects have been solicited at the same time in the same manner, one should not go to jail simply because he has been convicted before and is said to have a criminal disposition. No more does it vary according to the suspicion, reasonable or unreasonable, of the police concerning the defendant's activities. Appeals to the sympathy, friendship, the possibility of exorbitant gain, and so forth, can no more be tolerated when directed against a past offender than against an ordinary law-abiding citizen. A contrary view runs afoul of fundamental principles of equality under law, and would espouse the notion that when dealing with the criminal classes anything goes....

Sherman v. United States, 356 U.S. 369, 382-383, 78 S.Ct. 819, 825-826, 2 L.Ed.2d 848 (1958) (Frankfurter, J., concurring in result); cited in Cruz v. State, supra, 465 So.2d at 520. Also cited with approval by this Court in Cruz was the decision of the court in State v. Molnar, 81 N.J. 475, 484, 410 A.2d 37, 41 (1980), recognizing that "when official conduct inducing crime is so egregious as to impugn the integrity of a court that permits a conviction, the predisposition of the defendant becomes irrelevant...."

Thus, this Court held in Cruz:

> The subjective view recognizes that innocent, unpredisposed, persons will sometimes be ensnared by otherwise permissible police behavior. However, there are times when police resort to impermissible techniques. In those cases, the subjective view allows conviction of predisposed defendants. The objective view requires that all persons so ensnared be released.

Cruz v. State, id., emphasis added. The correct analysis of entrapment is to be performed in the following manner: first, as a threshold matter to be ruled on by the trial court, the State must establish the validity of police activity; only thereafter should it be given to the jury to decide whether "the criminal design originates with the officials of the government, and they plant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." This question is answered by deciding if the defendant is predisposed. Id. at 521. On the other hand, the threshold question of whether there has been objective entrapment by the police is determined by examining the police conduct: no entrapment has occurred where the police activity has as its end the interruption of specific, ongoing criminal activity, and it utilizes means reasonably tailored to apprehend those involved in the ongoing activity. Id. at 522.

Despite this Court's clear explanation that the focus of the objective entrapment test is on the conduct of the police and their agents, the Fourth District Court of Appeal applied, in its decision in the instant case, a standard which returns the focus back to the defendant and his predisposition. The relaxed formulation of the Cruz test employed by the district court in the instant case returns the objective entrapment test into an examination of the defendant's predisposition to commit an offense, rather than restricting attention, as required by this Court in Cruz and necessitated by the very purpose of the objective test, on what the police knew and did. That this case is not an isolated

expression is demonstrated by the description of the Cruz test contained in the decision of the Fourth District Court of Appeal in State v. Anders, 596 So.2d 463 (Fla. 4th DCA 1992):

> As to the objective test, the court held that as a matter of law, there was no entrapment if police activity:
>
> > (1) has as its end the interruption of a specific ongoing criminal activity [the predisposition element]; and
> > (2) utilizes means reasonably tailored to apprehend those involved in the ongoing criminal activity [the objective entrapment element].

Id. at 466-467 (emphasis added, brackets original).

The instant case itself demonstrates the danger of altering the emphasis of the objective entrapment test formulated by thus Court in Cruz. For, as noted by the district court, the evidence of whether or not Mr. Krajewski and his codefendant Poidomani actually planned to buy drugs when they came to Florida, rather than a boat as Mr. Krajewski claimed, was conflicting. Poidomani originally testified under oath at pretrial proceedings that he and Mr. Krajewski had a legitimate purpose in coming to Florida. It was only after he obtained his deal from the State in exchange for his trial testimony that he altered this story. The only other evidence supporting the pre-existence of a criminal plan on the part of Mr. Krajewski came from Phinney, the informant, who was admittedly under pressure to produce some kind of drug deal in order to obtain a sentencing concession in his own case, who was totally unsupervised by any governmental agency in his dealings with the targets of his machinations, and who admitted his

willingness to lie and cheat in the furtherance of his own interests.

Accepting the district court's re-interpretation of Cruz, then, would allow the very agent whose activities were subject to controversy to provide his own rehabilitation by the simple expedient of stating that the defendant he brought to police attention was, in essence, predisposed to commit the crime. The defendant, once caught in this web, would have no recourse other than his own denials, which a trial court would likely reject as self-serving (forgetting that the informant's contrary evidence was no less self-serving).

This Court wisely avoided such thorny quandaries in its Cruz test by requiring the State to demonstrate that the police knew of some specific, ongoing criminal activity toward the interruption of which it directed its informants to act. Such testimony is conspicuous by its absence in the present case, yet the district court of appeal persisted in its finding that the first prong of the Cruz test had not been established.

This conclusion stands in stark contrast to the interpretations applied by other district courts of appeal, which have given full credence to this Court's own Cruz analysis as outlined, supra. Thus, in State v. Evans, 597 So.2d 813 (Fla. 2nd DCA 1992), the appellate court noted that the informant entered into his agreement with the police before knowing anything of the defendant's involvement with drugs, and the State had never heard of the defendant before her boyfriend suggested she approach the informant. Since the defendant was not a targeted suspect in specific,

ongoing criminal prosecution, the first prong of the Cruz test for objective entrapment was held to have been met. Likewise, in Lewis v. State, 597 So.2d 842 (Fla. 3rd DCA 1992), the district court of appeal found that objective entrapment had been established, with Judge Schwartz, concurring, observing that while the objectively entrapped defendant made no claim that he was not predisposed to deal in drugs, dismissal of the charges was nevertheless required because the police use of an informant in that case was not preceded by knowledge of the defendant's proclivities. Since the same situation existed in the present case, the only correct conclusion must be that the first prong of the Cruz test was similarly satisfied here, contrary to the Fourth District Court of Appeal's finding.

As to the second prong of the Cruz test, the State freely conceded below that Phinney was not subject to any controls whatsoever by either State or federal officials: as summarized by the district court in its original decision in this cause, Phinney "testified that he was totally unsupervised by the government and was working independently to set up drug deals." Krajewski v. State, 587 So.2d 1175 (Fla. 4th DCA 1991); see also, Krajewski v. State, 597 So.2d 814 (Fla. 4th DCA 1992). The means employed by the State could not, therefore, be said to be reasonably tailored to apprehend those involved in ongoing criminal activity. Consequently, as in Hunter, the State's use of the informant in the present case did not meet the test set forth in Cruz, and the defense established that due process was violated.

The only remaining issue in this cause, therefore, is whether Mr. Krajewski is entitled to the benefit of the due process defense of entrapment. In Hunter, this Court declined to find that the due process rights of the second defendant, Hunter himself, were violated by the procedures used in that case, however. Because the informant's contacts with Hunter were "minimal" and restricted to telephone conversations, the State's involvement in Hunter's criminal activity was held not great enough to support the entrapment defense.

> When a middleman, not a state agent, induces another person to engage in a crime, entrapment is not an available defense. [Citations omitted.] Conklin [the other defendant], not [the informant], brought Hunter into the scheme, and Hunter's involvement was wholly voluntary even though his motive may have been benevolent. Hunter, therefore should not have been allowed to raise entrapment. Also, defendant's cannot raise "due process violations allegedly suffered by third parties." [Citations omitted.] Thus, Hunter's outrageous conduct/due process claim should not be heard.

State v. Hunter, id.

In the instant case, however, the Fourth District Court of Appeal stated the factual predicate for its original decision as follows:

> The facts are in dispute. Appellant's version of the facts is that his mother gave him $13,000 (or $14,000) to buy a boat. He came to Florida with Robert Poidomani, his codefendant, for the express purpose of making such a purchase. They contacted Vern Phinney, a boat repair specialist, who was also known to be a drug dealer and, as it turned out ion this case, was a police informer. They began to discuss boats, but Phinney suggested that they engage in the cocaine market. Appellant later testified that this suggestion "irritated" him and he told Phinney that his "main

> interest was to buy a boat and not to engage in that market." As a matter of fact appellant never looked at any boats. Eventually, appellant agreed to use the money to purchase cocaine "under pressure" exerted by Phinney. Appellant testified that he only agreed to the deal after Phinney pointed a gun at him and said that the deal had to go through because he was receiving pressure from the people with whom he was dealing. Poidomani indicated that Phinney had also pulled a gun on him. As a result, a drug purchase was arranged with an undercover police officer resulting in the arrest and subsequent convictions of appellant and Poidomani.
>
> At a hearing on a motion to dismiss, Poidomani testified substantially in accordance with the foregoing recitation. At trial, however, he testified that he and appellant came to Florida to purchase cocaine and the he had never heard anything about buying a boat until after his arrest. Poidomani's sentence was reduced from a possible 15 to 30 year mandatory minimum to a 7 1/2 year prison term n exchange for his testimony.

Krajewski v. State, supra, 587 So.2d at 1176 -1177 (emphasis added). Thus, the district court recognized in its decision that Phinney, the informant, had direct and personal contacts with Mr. Krajewski, which induced Mr. Krajewski to engage in his illegal activity.

This conclusion is entirely supported by the record in the instant case. Unlike in Hunter, where the third party, Hunter, had only "minimal telephone" contacts with the informant, who dealt primarily with the codefendant and did not even meet Hunter until the day that the drug deal was consummated, in the present case, Phinney personally conversed with both Poidomani and Mr. Krajewski once Poidomani introduced him to Mr. Krajewski on the former's return to Florida (R 384-385, 451). Further, he maintained daily contact with both of them over at least a three-day period (R 419)

after making his initial offer to help them buy drugs (R 455). Phinney viewed the two of them as a single entity for purposes of the drug transaction, "One man with the money, the other man did the talking." (R 430-431). This is in sharp contrast to Hunter, where Hunter, originally brought into the deal by the codefendant, ultimately "insisted that Hunter, not Conklin, complete the transaction," initiating the subsequent two or three telephone calls which were the only contact between him and the informant. State v. Hunter, supra.

Consequently, the present case is distinguishable from State v. Hunter, supra, with respect to the informant's involvement with both his initial contact and the defendant -- here, Mr. Krajewski -- who became the ultimate target of the State's investigation. The rationale which permitted this Court to reject Hunter's claim in that case is simply inapplicable to the case at bar. As a result, Mr. Krajewski was entitled to the benefit of this Court's Cruz analysis, under which he established that he was entrapped as a matter of law, so that the conviction obtained in violation of his due process rights under the Florida Constitution must be reversed and this cause remanded with directions that Mr. Krajewski be discharged.

CONCLUSION

Based on the foregoing argument and the authorities cited, Mr. Krajewski requests that this Court reverse his conviction and remand this cause with directions that his motion for judgment of acquittal on the grounds of entrapment be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JOSEPH A. TRINGALI and JOHN TIEDEMANN, Assistant Attorneys General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401, by courier this 20th day of OCTOBER, 1992.

Of Counsel